

FINAL STATEMENT OF REASONS

a) Update Regarding Non-Substantive Changes to the Proposed Regulations Text

Sections 87468(a), 87468(b)(1), and 87468(c)(1) are updated with revised section titles for referencing Sections 87468.1 and 87468.2 due to comments received during the May 2018 15-day Renotice. See comment response section for details.

Section 87468.1 changed the title grammatically by adding "All" due to comment received during the May 2018 15-day Renotice and reorganization of moving proposed Section 87468.3 in its entirety to Section 87468.1(b) et. seq. See comment response section for details. Also, the authority citation Health and Safety Code (HSC) section 1569.318 and reference citation HSC section 1439.51 are added at the end of Section 87468.1.

Section 87468.1(a) is updated with the addition of "all" for grammatical correction.

Sections 87468.1(b) through (d) were moved from the proposed Section 87468.3 Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender [Sections 87468.3(a) through (c)]. There were some technical edits at:

Section 87468.1(b)(7)(A) is updated to address the two terms "restriction" and "ban" together to facilitate clarity.

Section 87468.1(c) is updated to correct the reference of "this section" to "subsection (b)" due to the reorganization.

Section 87468.1(d) is updated to correct the reference of "subsection (a)" to "subsection (b)" due to the reorganization.

Section 87468.2 changed the title grammatically by adding "Additional" because of comment received during the May 2018 15-day Renotice. See comment response for details.

Section 87468.2(a) added reference to Section 87468.1 due to comment received during the May 2018 15-day Renotice. See comment response for details.

b) Update Regarding Initial Statement of Reasons

The March 2018 and May 2018 15-day Renotice Letters' Addendum to the ISOR are incorporated by reference herein to identify the updates to information contained in the Initial Statement of Reasons. These addendums include summaries of testimony made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate testimony.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or on local school districts. There are no reimbursable state-mandated costs under Section 17500 et seq. of the Government Code, because these regulations only make technical and clarifying changes.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives than the one proposed because this was the most effective. No reasonable alternative has been presented for review.

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Existing regulatory personal rights would continue to apply to privately and publicly operated RCFEs. Expanded personal rights regulations to implement AB 2171 would apply to privately operated RCFEs. Expanded personal rights regulations to implement SB 219 would apply to publicly and privately operated RCFEs. Regardless of number of residents, all licensees would be required to post personal rights, nondiscrimination notice, and complaint information, and post this information in English and any other language in which five percent or more of the residents can only read that other language.

There will be some administrative costs to licensees of all RCFEs as a result of AB 2171, SB 219, and SB 895. In regard to posting personal rights, licensees of privately operated RCFEs would need to post personal rights as specified in Section 87468.1, Personal Rights of Residents in All Facilities and in Section 87468.2, Additional Personal Rights of Residents in Privately Operated Facilities. Licensees of publicly operated RCFEs would need to post personal rights as specified in Section 87468.1, Personal Rights of Residents in All Facilities.

Licensees would need to update admission agreements as they relate to resident personal rights and RCFE procedures as they relate to posting these rights,

nondiscrimination notice, and complaint information in other languages read by five percent or more of residents in a RCFE. Licensees would also need to develop and implement a method for collecting information from residents on the language they read and compile this information into a single list that is kept accurate and current. CDSS anticipates that this list will result in negligible cost to licensees since existing regulations in the CCR, Title 22, section 87508 currently require a register of residents, which would be expanded to address languages read by residents. In addition, licensees would need to update the posted resident personal rights, nondiscrimination notice, and complaint information whenever the composition of languages primarily read by residents' changes.

Miscellaneous changes to regulations that do not address resident personal rights will require licensees of RCFEs to not accept or retain residents with unstageable wounds. However, this and other miscellaneous changes do not have any statewide adverse economic impact directly affecting businesses in California.

f) Testimony and Response (May 17, 2018 through June 1, 2018)

CDSS noticed these regulations to the public for a 15-day comment period through 15-Day Renotice for RCFE Personal Rights ORD #1115-13 May 2018, dated May 17, 2018. The public comment period closed at 5:00 p.m. on June 1, 2018.

The following testifiers submitted written testimony during the 15-day comment period:

Selena Coppi Hornback, Associate Director of Public Policy, California Assisted Living Association (CALA), identified below as CALA.

Patricia L. McGinnis and Jody L. Spiegel, California Advocates for Nursing Home Reform (CANHR), identified below as CANHR.

The following written testimony was received during the 15-day comment period:

1. Section 87468

a. Section 87468(a)

CANHR Comment:

The title of Proposed Section 87468.1, "*Personal Rights of Residents in Privately and Publicly Operated Facilities*," is unnecessarily complex and confusing. Proposed Section 87468.1 sets forth the rights of residents in privately operated RCFEs and publicly operated RCFEs, i.e., the rights of residents in **all** RCFEs. Accordingly, it would be clearer to state that the rights apply to all RCFEs instead of referencing them in relation to facility ownership

type. Additionally, the proposed title is confusing insofar as it could mean that the rights apply only to facilities that are operated both publicly and privately, rather than applying to facilities that are either privately operated or publicly operated. The title of Section 87468.1 should be amended to reflect its plain meaning—that the rights apply to residents in all facilities

Proposed Section 87468.2 should also be amended to reflect its plain meaning—that it sets forth **additional** rights for residents in privately operated facilities. The vast majority of California's RCFE residents live in privately operated facilities, and retitling the sections will make it clear that they are entitled to the rights set forth in **both** Sections 87468.1 and 87468.2.

Proposed Section 87468.3 sets forth rights involving issues of sexual orientation and gender identity available to **all residents in all RCFEs**. Consequently, the title of Proposed Section 87468.3, *“Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender,”* is inaccurate. These rights apply to all residents, and not just residents who are lesbian, gay, bisexual or transgender. Additionally, the rights apply to residents in all facilities, i.e., privately operated facilities and publicly operated facilities. Proposed Sections 87468.1 and 87468.3 each set forth rights available to all residents in all facilities, and should be merged to create a comprehensive list of rights for all residents in all RCFEs. A single comprehensive list will make it easier for consumers, licensees and regulators to identify rights and ensure compliance.

Response:

The Department is amending the proposed title of Section 87468.1 in response to CANHR's recommendations. It is appropriate to change the title to address all facilities, since "all" is inclusive of both privately and publicly operated RCFEs. Residents in all RCFEs, regardless of facility ownership type, have the personal rights specified in Section 87468.1.

The Department is also amending the proposed title of Section 87468.2 in response to CANHR's recommendations. It is appropriate to reflect that residents in privately operated facilities have "additional" rights. Health and Safety Code section 1569.265 applies the personal rights in Health and Safety Code section 1569.269 only to residents in privately operated RCFEs. Thus, these rights are plainly in addition to personal rights that apply to residents in all RCFEs in Section 87468.1.

Additionally, the Department is amending the proposed regulations to remove reference to the proposed title of Section 87468.3. We are merging the personal rights in Section 87468.3 with those in Section 87468.1 in response to CANHR's recommendations. It is appropriate to merge the personal rights of both sections since they apply to all residents in all RCFEs.

The Department is amending Section 87468(a) as recommended by CANHR:

- (a) Residents in residential care facilities for the elderly shall have personal rights which include, but are not limited to, those listed in Sections 87468.1, Personal Rights of Residents in ~~Privately and Publicly Operated~~ All Facilities, and 87468.2, Additional Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, ~~and those listed in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.~~

The Department is also amending references to the proposed title of Section 87468.1 and 87468.2 in Sections 87468(b)(1) and (c)(1). In addition, we are removing references to the proposed title of Section 87468.3 from those sections. We are making these amendments for consistency with the amendment to Section 87468(a) above:

- (b) At the time the admission agreement is signed, a resident and the resident's representative shall be personally advised of and given a copy of:
 - (1) The personal rights of residents specified in Sections 87468.1, Personal Rights of Residents in ~~Privately and Publicly Operated~~ All Facilities and 87468.2, Additional Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, ~~and the personal rights specified in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.~~
- (c) Licensees shall prominently post personal rights, nondiscrimination notice, and complaint information in areas accessible to residents, their representatives, and the public.
 - (1) The personal rights of residents specified in Sections 87468.1, Personal Rights of Residents in ~~Privately and Publicly Operated~~ All Facilities ~~or~~ and 87468.2, Additional Personal Rights of Residents in Privately Operated Facilities shall be posted as applicable to the facility. ~~The personal rights specified in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender, shall be posted in privately and publicly operated facilities.~~

Please also see our related responses in 1.d., Section 87468(b)(1) and 2.a., Sections 87468.1 through 87468.3 General Comment.

b. Section 87468(a)(1)

CALA Comment:

Proposed Regulation: *"Privately operated facility" means a residential care facility for the elderly that is licensed to an individual, firm, partnership, association, or corporation.*

This definition should be removed from the general regulation addressing resident rights and added to the regulation that specifically addresses personal rights in privately operated facilities or included in both. Placing the definition in the section that it is addressing will provide ease for the reader in not having to go back and forth between different regulations.

CALA suggests adding the definition to 87468.2 Personal Rights of Residents in Privately Operated Facilities.

Response:

The Department is maintaining the proposed language. We are not reverting back to separating personal rights into sections for privately and publicly operated facilities as proposed for the March 2018 15-Day Renotice. Instead, we are separating personal rights into sections that apply to all RCFEs and additional rights that apply to privately operated RCFEs.

This section, as a general section for all personal rights, establishes that RCFEs can be either "privately" and "publicly" operated. It also establishes the difference between the two facility ownership types to facilitate understanding of subsequent sections that specify the personal rights that apply to residents in different types of RCFEs.

Including the definition for "privately operated facility" in both Sections 87468 and 87468.2 as suggested by CALA would cause the definition to repeat twice in different sections of regulations, which may violate the "nonduplication" standard of the Administrative Procedures Act (APA), Section 11349 of Government Code, subsection (f).

Please also see our related response in 1.c., Section 87468(a)(2).

c. Section 87468(a)(2)

CALA Comment:

Proposed Regulation: *"Publicly operated facility" means a residential care facility for the elderly that is licensed to a city, county, or other governmental entity.*

This definition should be removed from the general regulation addressing resident rights and added to the regulation that specifically addresses personal rights in publicly operated facilities or included in both. Placing the definition in the section that it is addressing will provide ease for the reader in not having to go back and forth between different regulations.

CALA suggests adding the definition to 87468.1 and reverting the title back to Personal Rights of Residents in Publicly Operated Facilities.

Response:

The Department is maintaining its proposed language. We are not reverting back to separating personal rights into sections for privately and publicly operated facilities as proposed for the March 2018 15-Day Renotice. Instead, we are separating personal rights into sections that apply to all RCFEs and additional rights that apply to privately operated RCFEs.

This section, as a general section for all personal rights, establishes that RCFEs can be either "privately" and "publicly" operated. It also establishes the difference between the two to facilitate understanding of subsequent sections that specify the personal rights that apply to residents in different types of RCFEs.

Including the definition for "publicly operated facility" in both Sections 87468 and 87468.2 as suggested by CALA would cause the definition to repeat twice in different sections of regulations, which may violate the "nonduplication" standard of the Administrative Procedures Act (APA), Section 11349 of Government Code, subsection (f).

Please also see our related response in 1.b., Section 87468(a)(1).

d. Section 87468(b)(1)

CALA Comment:

Proposed Regulation: *The personal rights of residents specified in Sections 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities ~~or~~ and 87468.2, Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, and the personal rights specified in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.*

CALA strongly urges the Department to create one comprehensive set of rights for residents of publicly operated facilities and one for privately operated facilities that would include the rights given to residents who are lesbian, gay, bisexual, and transgender for ease of use for providers and residents.

CALA suggests deleting language that merges the rights of residents of publicly and privately operated facilities and creates a separate regulatory section for rights of residents who are lesbian, gay, bisexual, and transgender.

The personal rights of residents specified in Sections 87468.1, Personal Rights of Residents in ~~Privately and Publicly Operated Facilities~~ or and 87468.2, Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, ~~and the personal rights specified in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.~~

Response:

The Department is making a modified amendment to the proposed regulation in response to CALA's suggestion. We are not reverting back to separating personal rights into sections for privately and publicly operated facilities as proposed for the March 2018 15-Day Renotice. Instead, we are separating personal rights into sections that apply to all RCFEs and additional rights that apply to privately operated RCFEs. Thus, we are amending the proposed title of Section 87468.1 to address all facilities, since "all" is inclusive of both privately and publicly operated RCFEs.

The Department is amending the proposed regulations to merge the personal rights of residents who are lesbian, gay, bisexual, and transgender in Section 87468.3 with those for residents in all RCFEs in Section 87468.1. Thus, we are amending the proposed regulations to remove reference to the proposed title of Section 87468.3. since the rights in that section apply to all residents in all RCFEs.

The Department is amending Section 87468(b)(1) as shown:

- (b) At the time the admission agreement is signed, a resident and the resident's representative shall be personally advised of and given a copy of:
 - (1) The personal rights of residents specified in Sections 87468.1, Personal Rights of Residents in ~~Privately and Publicly Operated~~ All Facilities and 87468.2, Additional Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, ~~and the personal rights specified in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.~~

Please also see our related responses in 1.a., Section 87468(a) and 2.a., Sections 87468.1 through 87468.3 General Comment.

2. Sections 87468.1 through 87468.3

a. General Comment

CALA Comment:

CALA strongly urges the Department to create separate and comprehensive sections on personal rights for publicly and privately operated RCFEs that would contain all of the resident rights for each type of facility in one place, including rights of residents who are lesbian, gay, bisexual, and transgender. This would make compliance easier for providers who must follow these rules by making it clear which rights apply in the provider's setting.

CALA suggests renaming 87468.1 Personal Rights of Residents in Publicly Operated Facilities and adding requirements from 87468.3 Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender into one set of rights for publicly operated RCFE residents. CALA further suggests adding 87468.3 to 87468.2 and adding back the public rights that were removed from 87468.2 to make that a comprehensive set of rights for privately operated RCFEs.

Response:

The Department appreciates CALA's comment. However, the suggested change would not give all of the existing regulatory rights to residents in privately operated facilities, contrary to the intent of Health and Safety Code section 1569.267. This statute requires RCFE staff to provide residents with personal rights "...in this article and the personal rights in Section 87468 of Title 22 of the California Code of Regulations."

The Department is instead amending the proposed regulations to separate personal rights into Section 87468.1, which applies to all RCFEs and Section 87468.2, which applies additional rights to privately operated RCFEs. Section 87468.1 includes the 18 existing personal rights addressed in Section 87468, which have applied and will continue to apply, to all residents in all RCFEs. Thus, we are amending the proposed title of Section 87468.1 to address all facilities and the proposed title of Section 87468.2 to reflect that residents in privately operated facilities have "additional" rights.

Adding the personal rights in Section 87468.3 to the personal rights in both Sections 87468.1 and 87468.2 as suggested by CALA would cause the rights to repeat twice in different sections of regulations, which may violate the "nonduplication" standard of the Administrative Procedures Act (APA), Section 11349 of Government Code, subsection (f).

The Department is instead amending the proposed regulations to merge the personal rights of residents who are lesbian, gay, bisexual, and transgender in Section 87468.3 with those for residents in all RCFEs in Section 87468.1. The rights in both these sections apply to all residents in all RCFEs.

Please also see our related responses in 1.a., Section 87468(a) and 1.d., Section 87468(b)(1).

b. Section 87468.1

Section 87468.1 [Title]

CANHR Comment:

The title of Proposed Section 87468.1, “*Personal Rights of Residents in Privately and Publicly Operated Facilities*,” is unnecessarily complex and confusing. Proposed Section 87468.1 sets forth the rights of residents in privately operated RCFEs and publicly operated RCFEs, i.e., the rights of residents in all RCFEs. Accordingly, it would be clearer to state that the rights apply to all RCFEs instead of referencing them in relation to facility ownership type. Additionally, the proposed title is confusing insofar as it could mean that the rights apply only to facilities that are operated both publicly and privately, rather than applying to facilities that are either privately operated or publicly operated. The title of Section 87468.1 should be amended to reflect its plain meaning—that the rights apply to residents in all facilities.

Response:

The Department is amending the proposed title of Section 87468.1 in response to CANHR's recommendations. It is appropriate to change the title to address all facilities, since "all" is inclusive of both privately and publicly operated RCFEs. Residents in all RCFEs, regardless of facility ownership type, have the personal rights specified in Section 87468.1.

The Department is amending the title for Section 87468.1 as recommended by CANHR:

Personal Rights of Residents in ~~Privately and Publicly Operated~~ All Facilities

Please also see our related responses in 1.a., Section 87468(a) and 2.a., Section 87468.1 through 87468.3 General Comments.

Section 87468.1(a)

CALA Comment:

CALA strongly urges the Department to create a separate and comprehensive list of rights for residents of publicly operated facilities.

CALA suggests deleting the additional language to make clear the rights of residents in publicly operated RCFEs.

Residents in ~~privately and~~ publicly operated residential care facilities for the elderly shall have all of the following personal rights:

Response:

The Department appreciates CALA's comment. However, the Department is changing the title to address all facilities, since "all" is inclusive of both privately and publicly operated RCFEs. Residents in all RCFEs, regardless of facility ownership type, have the personal rights specified in Section 87468.1.

Please also see our related responses in 1.a., Section 87468(a) and 2.a., Section 87468.1 through 87468.3 General Comments.

c. Section 87468.2

Section 87468.2 [Title]

CANHR Comment:

Proposed Section 87468.2 should also be amended to reflect its plain meaning—that it sets forth **additional** rights for residents in privately operated facilities. The vast majority of California's RCFE residents live in privately operated facilities, and retitling the sections will make it clear that they are entitled to the rights set forth in **both** Sections 87468.1 and 87468.2.

Response:

The Department is amending the proposed title of Section 87468.2 in response to CANHR's recommendations. It is appropriate to reflect that residents in privately operated facilities have "additional" rights. Health and Safety Code section 1569.265 applies the personal rights in Health and Safety Code section 1569.269 only to residents in privately operated RCFEs. Thus, these rights are plainly in addition to personal rights that apply to residents in all RCFEs in Section 87468.1.

The Department is amending the title for Section 87468.1 as recommended by CANHR:

Additional Personal Rights of Residents In Privately Operated Facilities

Please also see our related responses in 1.a., Section 87468(a) and 2.a., Section 87468.1 through 87468.3 General Comments.

Section 87468.2(a)

CANHR Comment:

To ensure that consumers, licensees and regulators are aware that the rights of residents in privately operated facilities are set forth in two different sections, Sections 87468.1 and 87468.2, the introductory sentence should be amended to reference the initial list of rights available to residents in privately operated facilities.

Response:

The Department is amending the proposed regulation in response to CANHR's recommendation. We are amending the proposed title of Section 87468.1 to address all facilities, since "all" is inclusive of both privately and publicly operated RCFEs. We are also amending the proposed title of Section 87468.2 to reflect that residents in privately operated facilities have "additional" rights. This amendment is consistent with those amendments.

Please also see our related responses in 1.a., Section 87468(a) and 2.a., Section 87468.1 through 87468.3 General Comments.

d. Section 87468.3

Section 87468.3 [Section]

CANHR Comment:

Proposed Section 87468.3 sets forth rights involving issues of sexual orientation and gender identity available to **all residents in all RCFEs**. Consequently, the title of Proposed Section 87468.3, "*Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender*," is inaccurate. These rights apply to all residents, and not just residents who are lesbian, gay, bisexual or transgender. Additionally, the rights apply to residents in all facilities, i.e., privately operated facilities and publicly operated facilities. Proposed Sections 87468.1 and 87468.3 each set forth rights available to all residents in all facilities, and should be merged to create a comprehensive list of rights for all

residents in all RCFEs. A single comprehensive list will make it easier for consumers, licensees, and regulators to identify rights and ensure compliance.

Response:

The Department is amending the proposed regulations to merge the personal rights in Section 87468.3 with those in Section 87468.1 in response to CANHR's recommendations. It is appropriate to merge the personal rights of both sections since they apply to all residents in all RCFEs.

Please also see our related responses in 1.a., Section 87468(a) and 2.a., Section 87468.1 through 87468.3 General Comments.

Section 87468.3(a)(7)

CALA Comment:

CALA appreciates the Department adding clarifying language to the factual basis for this expanded right, but it is still unclear what the specific requirement is and how a RCFE provider would ensure that right is protected. Additionally, any clarifying language should be added directly to the regulation and not just the factual basis.

CALA suggests the statement be reworded to provide more clarity in plain language to licensees and residents regarding this right.

Response:

The Department appreciates CALA's comment. The Department prefers to avoid overly prescriptive requirements that may make providing the necessary protection difficult.

The Department is instead amending the proposed regulation to rearrange proposed language for clarity. This is necessary to specify that any restriction or ban on consensual sexual relations must be applied uniformly to all residents in a nondiscriminatory manner and ensure a resident is informed of either a restriction or ban before they sign an admission agreement. Our rearrangement of language meets the intent of the personal right in Health and Safety Code section 1439.51(a)(7) by addressing a restriction or ban together and getting rid of duplicative language in regard to applying a restriction or ban uniformly to all residents in a nondiscriminatory manner.